IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 849 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHOYE SHAMJIBHAI AVSUBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 849 of 1999

MR D. MEHTA with MS KHYATI P HATHI

for Petitioner No. 1-4

MR N.D.GOHIL, AGP for Respondent No. 1

MR HARSHAD J SHAH for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 14/08/2003

ORAL JUDGEMENT

Heard learned advocate Mr. Mehta with learned

advocate Ms. Khyati P Hathi for the petitioners, learned AGP Mr. N.D.Gohil appearing on behalf of respondent No.1 - state and, learned advocate Mr. Harshad J Shah appearing on behalf of respondent No.2.

2. In the present petition, petitioners are challenging the order of termination dated 30.01.1999. This Court has issued rule on 27.7.1999. No affidavit-in-reply has been filed on behalf of respondent Nos. 1 & 2.

3. When the matter has been taken up for hearing, learned advocate Mr. Mehta appearing on behalf of the petitioners has submitted that identical appointment orders were also issued by the District Panchayat, Dang in favour of other employees and thereafter identical order of termination dated 30.01.1999 has also been issued by the District Panchayat, Dang against the other employees. Mr. Mehta has further submitted that a similarly situated employee, Mahendra D Choudhary, whose services were also terminated on 30.1.1999 has, initially, challenged the said order of termination before this Court and this Court has relegated to approach the Gujarat Civil Services Tribunal and then he approached by way of appeal before the Gujarat Civil Services Tribunal, Gandhinagar in Appeal No. 300 of 1999. The Tribunal has decided the matter on 7.11.2000 and ultimately the Tribunal has come to the conclusion as under:-

> "The appeal is allowed. The impugned order dated 30.1.1999 of the Respondent No.1 - District Development Officer, Dang - Ahwa and order dated 24.12.1998 of the Respondent No.2 - Additional director (Health), Gandhinagar, respectively are quashed and set aside. Respondent No.1 is directed to reinstate the appellant and provide him an opportunity to undergo training. Further, the intervening period be treated as leave due."

Mr. Mehta has also submitted that this order of Tribunal was challenged by the District Panchayat, Dang before this Court being Special Civil Application No. 5087 of 2001 wherein this Court has passed order on 20.7.2001 and rejected the petition filed by the District Panchayat, Dang with a further direction to the District Panchayat, Dang to comply with the order passed by the Tribunal. The relevant observations made by this Court are quoted as under:-

> "The Tribunal has given very cogent reasons for

coming to the conclusion that after the appointment of the respondent No.1, no training is organised by the department. The appointment order at page 16 is very clear that as and when the training camp is organised, the respondent No.1 will have to undergo such training. It is an admitted fact that after his appointment, the Department has not organised any training camp and, therefore, there was no question of the 1st respondent appearing in such training camp. The Tribunal has also given reasoning in paragraph 3 to the effect that the respondent No.1 has got 10 years' seasonal experience in spraying insecticides and, accordingly, he was fulfilling that criterion at the time of appointment. Considering the reasoning given by the Tribunal, there is no ground to entertain this petition. It is also required to be noted that the order of the Tribunal is as back as of November, 2000. Practically, more than 9 months back the order was passed; still, the Department has not complied with the order of the Tribunal. In that view of the matter, the order of the Tribunal is directed to be complied with forthwith. So far as this petition is concerned, I do not find any substance in this petition and the same is accordingly dismissed at the admission stage."

Thereafter, Mr. Mehta has submitted that order passed by the learned single Judge of this Court (Coram : P.B.Majmudar,J) in Special Civil Application No. 5087 of 2001 dated 20.7.2001 was challenged by the District Panchayat, Dang before the Division Bench of this Court in LPA No. 617 of 2003. The Division Bench of this Court has also dismissed the appeal on 30.6.2003 and confirmed the order passed by the Tribunal. The observation made by the Division Bench of this Court is quoted as under:-

"As the appeal is dismissed, there shall be no order on the Civil Application, which stands disposed of accordingly."

Learned advocate Mr. Mehta has also pointed out by placing on record a copy of the reinstatement order passed by the District Panchayat, Dang dated 21.7.2003 in favour of Mahendra D Choudhary granting the reinstatement on condition to complete the training and Mr. Mehta has also submitted that Mr. Choudhary has already been reinstated by the District Panchayat, Dang. Meaning thereby, that order of Tribunal has been fully

implemented by the District Panchayat, Dang.

4. Learned advocate Mr. H.J.Shah appearing on behalf of respondent No.2 is not disputing any of the orders and facts narrated by this Court in respect to the similarly situated employee who has challenged the identical order of termination. In the present case, the petitioners services have been terminated with an identical order that they have not completed training of one year and their services have been terminated on 30.01.1999. Therefore, considering this fact, it is not in dispute between the parties that in identical order, termination order dated 30.1.1999 was set aside by the Tribunal which is confirmed up the Division Bench of this Court which resulted in implementation of the reinstatement order by the District Panchayat, Dang. Therefore, considering this fact, I am not giving any further reasons and I am adopting the same reasons given by the Tribunal and that may be considered as part and parcel of this order.

5. Therefore, in result, the order of termination dated 30.1.1999 passed against the petitioners by the respondent No. 2, District Development Officer, Dang-Ahwa and order dated 24.12.1998 passed by respondent No.1, Additional Director (Health), Gandhinagar is quashed and set aside and respondent Nos. 1 and 2 is directed to reinstate the petitioners and provide them opportunity to undergo training and further, the intervening period be treated as leave due.

6. In the result, present petition is allowed. Rule is made absolute.

(H.K.Rathod,J)
Jayanti*